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6 **IN THE DISTRICT COURT OF GUAM**
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9 JOHN RYAN,

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11 Plaintiff,

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13 v.

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15 DAFNE MANSAPIT-SHIMIZU in her
16 official and individual capacities as the
17 DIRECTOR OF THE GUAM
18 DEPARTMENT OF REVENUE AND
19 TAXATION, MARIE LIZAMA in her
20 official and individual capacities as the
21 DEPUTY DIRECTOR OF THE GUAM
22 DEPARTMENT OF REVENUE AND
23 TAXATION, and JOHN DOES 1-15,

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25 Defendants.
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Case No. 1:23-cv-00015

**MEMORANDUM DECISION AND
ORDER DENYING DEFENDANTS'
REQUEST TO PRESENT WITNESS
TESTIMONY AT ORAL ARGUMENT**

28 Currently pending before the Court is Plaintiff's Motion to Compel (ECF No. 50), which
29 is set for oral argument to take place on September 30, 2025. (Notice, ECF No. 61.) After briefing
30 was completed on the Motion to Compel (*see* Resp. to Mot. to Compel, ECF No. 51; Reply to
31 Opp'n to Mot. to Compel, ECF No. 54), on August 22, 2025, Defendants filed a Request for Oral
32 Argument on Plaintiff's Motion to Compel, in which they included a request for leave "to identify
33 certain employees of the Department of Revenue and Taxation (DRT) and to call these employees
34 as sworn witnesses to testify at the hearing," with the expected length of the testimony of such
35 unnamed witnesses to "last no more than one (1) day, if that." (Defs.' Request for Oral Arg. on
36 Pl.'s Mot. to Compel 1-2, ECF No. 60.) On September 12, 2025, the Court set a virtual status
37 conference for September 16, 2025, to address Defendants' request for leave. (Notice of Hr'g,

1 ECF No. 62.) Shortly after notice of the status conference was issued, Plaintiff filed an Opposition
2 to the Request to Call Witnesses. (Opp’n to Request, ECF No. 63.)

3 On September 16, 2025, the Court held the virtual status conference. Plaintiff’s counsel
4 Braddock J. Huesman, Esq., was present; Rebecca M.P. Copper, Esq., Principal Tax Attorney at
5 DRT’s Office of the Principal Income Tax Attorney and former counsel of record for Defendants,
6 made a limited appearance on behalf of Defendants. (Mins., ECF No. 64.) The Court announced
7 its inclination and reasoning. After hearing the responses briefly from the Parties on Defendants’
8 request for leave, the Court orally denied Defendants’ request to present witness testimony at oral
9 argument. In view of the absence of Defendants’ counsel of record from the virtual status
10 conference and the issues noted at the same, the Court issues this order to memorialize its
11 reasoning.

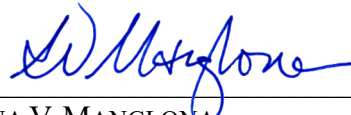
12 Defendants’ request to present witness testimony is denied for two reasons. First,
13 Defendants’ request fails to comply with the Civil Local Rules of Practice. CVLR 7(k) provides
14 that where a motion raises matters “where testimony must be heard or other evidence presented at
15 a hearing,” a party must state their request for an evidentiary hearing, along with the “the time
16 required for the presentation of evidence and argument,” in the party’s first brief concerning the
17 motion. CVLR 7(k)(1). In addition, “[i]f a motion, response or reply requires consideration of
18 facts not appearing of record, the movant or opponent shall also serve and file copies of all
19 affidavits, declarations, photographic or other evidence presented in support of or in opposition to
20 the motion.” *Id.* 7(b); *see also id.* 7(h) (“No further or supplemental brief shall be filed without
21 leave of court.”). Defendants failed to make their request for an evidentiary hearing in their
22 original response to Plaintiff’s Motion to Compel. Defendants also failed to reduce their proposed
23 evidentiary presentation to a form accompanying their original response to the Motion to Compel.

1 The Court declines to grant Defendants’ request because there is no legal, equitable, or factual
2 basis to excuse Defendants’ failures to comply with the Civil Local Rules and Practice or to permit
3 Defendants to put on new evidence not previously disclosed during discovery or in the briefing on
4 the Motion to Compel.

5 Second, Defendants’ proposed evidentiary presentation is not relevant to the disposition of
6 Plaintiff’s Motion to Compel. Defendants’ vague suggestions of the scope of witness testimony—
7 apparently concerning the DRT’s workings and procedures generally and in this case
8 specifically—do not bear on whether the information Plaintiff sought through his discovery
9 requests are within the scope of discovery and whether Defendants failed to respond to proper
10 discovery requests. *See* Fed. R. Civ. P. 37 advisory committee’s note to 1970 amendment
11 (explaining that use of “failure” throughout Fed. R. Civ. P. 37 refers to “simply a failure to comply,”
12 without any requirement of “wilfulness,” and that “wilfulness was relevant only to the selection
13 of sanctions, if any, to be imposed”). Insofar as Defendants seek to put on evidence to respond to
14 Plaintiff’s request for discovery sanctions pursuant to Fed. R. Civ. P. 37(b) (*see* Mot. to Compel 2
15 (requesting sanctions against Defendant Lizama “in her official capacity in an amount sufficient
16 to deter similar behavior”); Defs.’ Request for Oral Arg. 2 (citing threat of sanctions)), Plaintiff’s
17 request is premature because no order compelling discovery has been issued. *See* Fed. R. Civ. P.
18 37(b)(2) (requiring existence of “an order to provide or permit discovery” before any “further just
19 orders” can issue); *Unigard Sec. Ins. Co. v. Lakewood Eng’g & Mfg. Corp.*, 982 F.2d 363, 368 (9th
20 Cir. 1992) (“Rule 37(b)(2)’s requirement that there be some form of court order that has been
21 disobeyed has not been read out of existence[.]”). Therefore, Defendants’ request is also denied
22 on the ground that any presentation of evidence concerning the threat of sanctions is similarly
23 premature.

1 As discussed at the hearing, the Parties will appear before the Court for oral argument on
2 Plaintiff's Motion to Compel **on September 29, 2025, at 1:00 p.m.** The Court will not entertain
3 any evidentiary presentation at oral argument. To the extent that the Parties are in communication
4 with each other and may resolve certain of Plaintiff's discovery requests that are the subject of the
5 Motion to Compel, Parties should be prepared to make representations concerning what requests
6 remain outstanding and needing resolution by the Court. The Court further notes that while
7 sanctions under Rule 37(b) cannot issue at this juncture, "reasonable expenses incurred" in either
8 making or opposing the motion remain available. Fed. R. Civ. P. 37(a)(5). In addition, given the
9 fact that the current DRT Director is Defendant Lizama and Defendant Mansapit-Shimizu remains
10 a party in this action solely in her personal capacity, the Parties should take appropriate steps to
11 indicate what updates to the case caption are necessary to reflect the status and capacities of the
12 Defendants and counsel's ability to continue representing their clients.

13 IT IS SO ORDERED this 16th day of September, 2025.

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16 RAMONA V. MANGLONA
17 District Judge
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